



# THE BANK OF CALIFORNIA

Portland Office: 407 S. W. Broadway · Portland, Oregon · Mailing Address: P.O. Box 3121, 97208 · (503) 225-3636

August 29, 1978

Hon. H. G. Homme  
Acting Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 2670 Filed & Recorded

SEP 1 1978 -2 30 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED  
SEP 1 2 25 PM '78  
T.C.C.  
FEE OPERATION BR.

Dear Sir:

Will you please record, as provided in Section 20C of the Interstate Commerce Act, the Railroad Equipment Security Agreement dated as of August 1, 1978 granting a security interest in railroad hopper cars. Two duplicate originals and one certified copy are enclosed with this letter of transmittal, along with a check in the amount of \$50.00.

The information required for such recordation by order of the Interstate Commerce Commission is as follows:

Section 1116.4 (b). The names and addresses of the parties to the transaction:

Mortgagor - Russell B. Jones and Sandra E. Jones  
William M. Cormack and Maryann Cormack  
545 N. W. 87th Terrace  
Portland, Oregon 97229

Mortgagee - The Bank of California, N.A.  
P. O. Box 3121  
Portland, Oregon 97208  
Attn: Commercial Loans

8-24441-5

NO. 232, 233  
Date 8-30-78  
50  
ICC Washington, D. C.

RECEIVED  
SEP 5 11 57 AM '78  
I.C.C. OPERATION BR.

RECORDATION NO. 9679 Filed & Recorded

Interstate Commerce Commission  
Washington, D.C.

SEP 5 1978 12 00 PM

Gentlemen:

~~INTERSTATE~~ **COMMERCE COMMISSION**

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and two counterparts of a Conditional Sale Agreement dated as of August 1, 1978.

A general description of the railroad rolling stock covered by the enclosed document is set forth in Schedule 1 attached to this letter and made a part hereof.

The names and addresses of the parties are:

Manufacturer: Pullman Incorporated  
(Pullman Standard Division)  
200 S. Michigan  
Chicago, Illinois 60604

Vendee: The First National Bank  
of Chicago, as Trustee under  
F.I. Trust No. 7  
One First National Plaza  
Chicago, Illinois 60670

The undersigned is the Vendee mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original Conditional Sale Agreement to Terrence M. Walsh, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

THE FIRST NATIONAL BANK OF  
CHICAGO,  
as Trustee under F.I. Trust  
No. 7

By

Its Vice Pres.

8-248A-97

NE

SEP 5 1978

Date

Fee \$ 100

Enclosures

ICC Washington, D. C.

*Handwritten:* C. D. Kasper

DESCRIPTION OF EQUIPMENT

<u>Quantity</u>	<u>Description</u>	<u>Road Mark and Numbers</u>
100	100-ton covered hopper cars	FLIX 600 to FLIX 699, both inclusive

SCHEDULE 1

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**9/5/78**

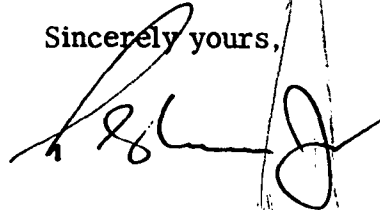
**OFFICE OF THE SECRETARY**

**Terrence M. Walsh, Esq.**  
**Chapman & Cutler**  
**111 West Monroe Street**  
**Chicago, Illinois 60603**

**Dear Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on **9/5/78** at **12:00pm**,  
and assigned recordation number(s) **9679, 9679-A & 9680**

Sincerely yours,



**H.G. Homme, Jr.,**  
**Acting Secretary**

**Enclosure(s)**

**SE-30-T**  
**(2/78)**

9679  
RECORDATION NO. .... Filed & Recorded

SEP 5 1978 -12 00 PM

MINNESOTA COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of August 1, 1978

Between

PULLMAN INCORPORATED  
(PULLMAN STANDARD DIVISION)

as Manufacturer

and

THE FIRST NATIONAL BANK OF CHICAGO,

as Trustee under F.I. Trust No. 7,

as Vendee

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(F.I. Trust No. 7)

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Attachments to Conditional Sale Agreement:

Schedule A - Description of Equipment

CONDITIONAL SALE AGREEMENT dated as of August 1, 1978 ("this Agreement" or "the Conditional Sale Agreement") between PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION) (the "Manufacturer") and THE FIRST NATIONAL BANK OF CHICAGO, as trustee under F. I. Trust No. 7 (the "Vendee") pursuant to the Trust Agreement dated as of August 1, 1978 (the "Trust Agreement") between the Vendee, as trustee, and AMERICAN ROAD EQUITY CORPORATION (the "Trustor").

WHEREAS, the Manufacturer is willing to construct, sell and deliver to the Vendee, and the Vendee is willing to purchase, the items of railroad equipment to be built by the Manufacturer as described in Schedule A attached hereto (collectively the "Items of Equipment" or "Equipment" and individually an "Item" or "Item of Equipment");

WHEREAS, the Vendee is executing a lease dated as of the date hereof in respect of the Equipment with Farmland Industries, Inc., a Kansas cooperative corporation (the "Lessee"), substantially in the form attached as Exhibit B to the Trust Agreement (the "Lease"); and

WHEREAS, the Manufacturer and the Vendee contemplate that the rights, security title and interest of the Manufacturer in and to the Equipment and certain rights and interests of the Manufacturer in and to this Agreement will be assigned to New England Mutual Life Insurance Company (the "Assignee") pursuant to an Agreement and Assignment dated as of the date hereof (the "Assignment") between the Manufacturer and the Assignee;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

#### SECTION 1. CONSTRUCTION AND SALE.

The Manufacturer will construct, sell and deliver to the Vendee, and the Vendee will purchase from the Manufacturer and accept delivery of and pay for as hereinafter provided, the Equipment, each Item of which shall be constructed in accordance with the applicable specifications referred to in Schedule A with such modifications thereof as may be agreed upon in writing by the Vendee, the Lessee and the Manufacturer (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material in such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to new railroad equipment of the character of such Items as of the Closing Date (as defined in Section 3.4 hereof) with respect to such Items.

## SECTION 2. DELIVERY.

2.1. The Manufacturer will deliver the various Items of Equipment to the Vendee in accordance with the delivery schedule set forth in Schedule A; provided, however, that the Manufacturer shall have no obligation to deliver any Item of Equipment hereunder so long as any Event of Default pursuant to Section 14.1 hereof shall have occurred and be continuing. The Manufacturer agrees to give the Lessee, the Vendee and the Assignee not less than five business days' prior written notice of the delivery of the first Item of Equipment hereunder. The Manufacturer agrees not to deliver and the Vendee shall have no obligation to accept any Items of Equipment following notice to such Manufacturer from the Vendee, the Lessee or the Assignee that any Event of Default pursuant to Section 14.1 hereof has occurred and is continuing.

2.2. The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions of this Agreement, the Vendee shall not be obligated hereunder to accept and pay for any Item of Equipment not delivered and accepted on or before the Outside Delivery Date provided therefor in Schedule A. Any Item of Equipment not so delivered and accepted shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Items of Equipment not excluded herefrom and the Manufacturer agrees to look solely to the obligations of the Lessee pursuant to Section 1.2 of the Lease in respect of such excluded Item of Equipment.

2.4. The Equipment during construction shall be subject to inspection by an inspector or other authorized representative of the Lessee and the Vendee. Upon completion of one or more Items of Equipment, the same shall be presented to an inspector of the Lessee for inspection at the place specified for delivery thereof. Acceptance of any Items of Equipment by the Lessee under the Lease shall be deemed to be acceptance of such Items of Equipment by the Vendee, and the Vendee agrees to use reasonable efforts to cause the Lessee to furnish the Certificate or Certificates of Acceptance under the Lease to the Manufacturers in such number of counterparts as may be reasonably requested.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss thereof or damage thereto until delivery and acceptance thereof pursuant to Section 2.4 hereof. Upon delivery and acceptance of each such Item of Equipment pursuant to Section 2.4 hereof, the Vendee shall bear the risk of loss of or damage to such Items.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, which shall include prepaid freight charges and storage charges, if any, prior to delivery, but exclusive of interest and all other charges, is as set forth in Schedule A. Such base price per Item of Equipment shall be subject to increase or decrease as set forth in an invoice from the Manufacturer to the Vendee accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the price of such Item as set forth in said invoice, and the term "Purchase Price" as used herein shall mean such base price as so increased or decreased; provided that the Purchase Price for any Item of Equipment shall not exceed the Maximum Purchase Price provided therefor in such Schedule A. If on the Closing Date (as defined in Section 3.4 hereof) the Purchase Price of any Item of Equipment for which settlement is then being made under this Agreement would, but for the provisions of this sentence cause the Maximum Purchase Price for all Items of Equipment to be exceeded, the Vendee and the Manufacturer hereby agree to exclude from this Agreement such Item or Items of Equipment as will, after giving effect to such exclusion, reduce such aggregate Purchase Price of all Items of Equipment to not more than an amount equal to the aggregate Maximum Purchase Price for all Items of Equipment and the Manufacturer agrees to look solely to the obligation of the Lessee pursuant to Section 1.2 of the Lease in respect of such excluded Equipment.

3.2. Subject to the provisions of Section 13 hereof, the Vendee hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay to the Manufacturer at such bank or trust company in the United States of America as the Manufacturer or its assignee shall designate for payment to it, the Purchase Price of the Items of Equipment as follows:

(a) On the Closing Date an amount equal to 34.76% of the aggregate Purchase Price for all Items of Equipment; and

(b) An amount (herein sometimes called the "Conditional Sale Indebtedness") equal to the difference between the aggregate Purchase Price for all Items of

Equipment and the aggregate amount paid pursuant to subparagraph (a) of this Section 3.2 plus interest on the unpaid balance thereof payable in fifty-five (55) consecutive installments, including both principal and interest at the rate of 9% per annum, payable on the date which is three calendar months after the Closing Date and quarter-annually thereafter, as follows:

(i) Forty (40) installments payable on the first through fortieth such payment dates, each in an amount equal to 3.203556% of the original principal amount of the Conditional Sale Indebtedness, followed by

(ii) Fourteen (14) installments payable on the forty-first through fifty-fourth such payment dates, each in an amount equal to 3.106231% of the original principal amount of the Conditional Sale Indebtedness, followed by

(iii) A final installment equal to the entire unpaid principal amount of the Conditional Sale Indebtedness and all accrued and unpaid interest thereon.

3.3. The obligation of the Vendee to pay the amounts specified in Section 3.2 hereof is subject to the fulfillment on or before the respective dates hereinafter set forth of the following conditions (any of which may be waived by the Vendee and the payment by the Vendee of the amounts so specified in clause (a) of Section 3.2 shall be conclusive evidence that such condition has been fulfilled or irrevocably waived):

(a) Concurrently with the delivery to and acceptance by the Lessee under the Lease of the first Item of Equipment (hereinafter the "First Delivery Date"), the Assignee shall have received the favorable written opinion of Messrs. Chapman and Cutler, who are acting as special counsel for the Assignee, to the effect that:

(1) the Trust Agreement has been duly authorized, executed and delivered by the Vendee and constitutes a valid, binding and effective agreement and declaration of trust by the Vendee in accordance with the terms thereof;

(2) the trust created and provided for by the Trust Agreement is not taxable as an association under existing statutes, regulations and decisions relating to Federal Income Taxes;

(3) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the respective parties thereto and constitute legal, valid and binding instruments enforceable in accordance with their respective terms;

(4) assuming due authorization, execution and delivery by the Assignee, the Assignment and the Finance Agreement have been duly authorized, executed and delivered by the respective parties thereto and constitute legal, valid and binding instruments enforceable in accordance with their respective terms;

(5) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by the Assignment;

(6) upon settlement therefor pursuant to the Assignment, security title to the Equipment will be validly vested in the Assignee;

(7) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or the Assignment or the Lease;

(8) the Conditional Sale Agreement, the Assignment and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or the District of Columbia; and

(9) the offering, sale and delivery of the Conditional Sale Agreement and the Conditional Sale Indebtedness payable hereunder under the circumstances contemplated by the Finance Agreement constitute an exempted transaction under the Securities Act of 1933, as amended, which does not require registration thereunder of the Conditional Sale Agreement or this Conditional Sale Indebtedness and under the Trust Indenture Act of 1939 which does not require qualification of an indenture thereunder, and if the Assignee should in the future deem it expedient to sell its interest in the Conditional Sale Indebtedness (which it does not now contemplate or foresee) such sale would be an exempted transaction under the Securities Act of 1933, as amended, providing that the circumstances involved in any such transaction do not constitute the Assignee an "underwriter"

of the conditional sale indebtedness within the meaning of said Act, and the transaction is not made through an "underwriter" within the meaning of said Act;

(b) Concurrently with the First Delivery Date, the Vendee, the Trustor and the Assignee shall have received the favorable written opinion of counsel for the Lessee, addressed to the Vendee, the Trustor and the Assignee with respect to the matters set forth in paragraphs (6), (7) and (8) of paragraph (a) of this Section 3.3 and to the effect that:

(1) the Lessee is a cooperative corporation duly incorporated and validly existing, in good standing, under the laws of the State of Kansas;

(2) the Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all jurisdictions in which such qualification is necessary to carry out the terms of the Lease, the Finance Agreement and the Tax Indemnity Agreement (as defined in the Trust Agreement);

(3) the Lease, the Finance Agreement and the Tax Indemnity Agreement have been duly authorized, executed and delivered by the Lessee and constitute the valid, legal and binding agreements of the Lessee enforceable against the Lessee in accordance with their respective terms;

(4) the execution and delivery by the Lessee of the Lease, the Finance Agreement and the Tax Indemnity Agreement do not violate any provision of any law, any order of any court or governmental agency, the charter or By-Laws of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee; and

(5) as to any other matter which the Vendee, the Trustor or the Assignee may reasonably request;

(c) Concurrently with the First Delivery Date, the Vendee, the Trustor and the Assignee shall have received the favorable written opinion of counsel for the Vendee, addressed to the Lessee, the Trustor and the Assignee to the effect that:

(1) The First National Bank of Chicago is a duly organized and existing national bank in good standing under the laws of the United States of America;

(2) the Trust Agreement has been duly authorized, executed and delivered by The First National Bank of Chicago and assuming due authorization, execution and delivery by the Trustor, constitutes a valid, binding and effective agreement and declaration of trust by The First National Bank of Chicago in accordance with the terms thereof;

(3) the Vendee has full right, power and authority under the Trust Agreement to enter into, execute and deliver the Conditional Sale Agreement and the Lease, to perform each and all of the matters and things provided for in said instruments; and

(4) the Conditional Sale Agreement and the Lease have been duly executed and delivered by the Vendee and assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding instruments of the Vendee enforceable in accordance with their respective terms;

(d) Concurrently with the First Delivery Date, the Vendee and the Assignee shall have received the favorable written opinion of Burton Silverstein, Esq., Senior Attorney for the Trustor, addressed to the Vendee, the Lessee and the Assignee to the effect that:

(1) the Trustor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation;

(2) the Trustor has full right, power and authority to enter into and perform the Trust Agreement in accordance with the terms thereof;

(3) the Trust Agreement has been duly authorized, executed and delivered by the Trustor and, assuming due authorization, execution and delivery by the other party thereto, constitutes a valid instrument binding upon the Trustor enforceable against the Trustor in accordance with its terms;

(4) the Trust Agreement does not nor will the performance of the Trustor thereunder violate the provisions of any indenture or other agreement known to such counsel to which the Trustor is a party or by which the Trustor may be bound; and

(5) no approval, consent or withholding of objection on the part of any regulatory body, state,

Federal or local is necessary in connection with the execution or performance by the Trustor of the Trust Agreement or, to the extent such approval, consent or such other action is necessary, the same has been obtained and is in full force and effect;

(e) Concurrently with the First Delivery Date the Lessee shall have delivered to the Vendee and the Assignee a certificate of a Vice President of the Lessee to the effect that no Event of Default, as specified herein or in the Lease, or any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an Event of Default, has occurred and is continuing, and that there has been no material adverse change in the condition of the Lessee, financial or otherwise, since August 31, 1977.

(f) Concurrently with the delivery to and acceptance by the Lessee under the Lease of each Item of Equipment, the Vendee and the Assignee shall have received from the Lessee a Certificate of Acceptance covering such Item of Equipment executed by a duly authorized representative of the Lessee pursuant to Section 1 of the Lease.

(g) Prior to or concurrently with the payment by the Vendee of the amount specified in Section 3.2(a) hereof, the Vendee, the Trustor and the Assignee shall have received from the Manufacturer, the following items:

(1) Bill or Bills of Sale from the Manufacturer to the Assignee, transferring to the Assignee security title to the Equipment and warranting to the Assignee and to the Vendee that at the time of delivery to the Vendee under the Conditional Sale Agreement the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment, and title to the Equipment was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(2) Invoices for the Equipment accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the prices of the Equipment as set forth in said invoices; and

(3) Opinion of counsel for the Manufacturer addressed to the Vendee, the Trustor and the Assignee, dated the Closing Date, to the effect set forth in clause (5) of subparagraph (a) of this Section 3.3 and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement, the Assignment and each Bill of Sale referred to in clause (i) of this subparagraph (g) have each been duly authorized, executed and delivered by the Manufacturer and, assuming the due authorization, execution and delivery thereof by each other party thereto, are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their respective terms, and (iii) security title to the Equipment is validly vested in the Assignee at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, free of all claims, liens and encumbrances, except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease.

In giving the opinions specified in paragraphs (a) through (d) and (g)(3) of this Section 3.3, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

3.4. The term "Closing Date" shall mean such date which is not more than 10 business days following presentation by the Manufacturer to the Lessee and the Vendee of the invoice or invoices for the Equipment, as shall be fixed by the Lessee by written or telegraphic notice delivered to the Manufacturer, the Vendee and the Assignee at least five business days prior to the Closing Date.

3.5. The term "business day" as used herein means any day other than a Saturday, Sunday or other day on which banks in the States of Illinois or Michigan are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for the period

from and after the nominal date for payment thereof to such next succeeding business day.

3.6. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

3.7. The Vendee will pay interest at the rate of 10% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

3.8. All payment provided for in this Agreement shall be made by the Vendee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

3.9. Except as provided in Section 6.1, 6.3 or 6.4 hereof, the Vendee shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

3.10. The Manufacturer, the Vendee, the Trustor and the Lessee each contemplate that on the Closing Date, the Equipment will be settled for hereunder through payment by the Vendee to the Manufacturer pursuant to Section 3.2(a) hereof of an amount equal to 34.76% of the Purchase Price of the Equipment and by the payment to the Manufacturer on such date of the balance of such Purchase Price by the Assignee in accordance with the terms and provisions of the Assignment. Notwithstanding such contemplation, in the event that for any reason the Assignee shall fail on the Closing Date to advance an amount equal to 65.24% of the aggregate Purchase Price of the Equipment, so long as the conditions set forth in clause 3.3(g) hereof have been fulfilled by the Manufacturer on the Closing Date, then the Vendee hereby agrees to pay to the Manufacturer an amount equal to 100% of the aggregate Purchase Price of the Equipment. Anything in this Agreement to the contrary notwithstanding, upon the advance by the Vendee pursuant to this Section 3.10, the Vendee shall thereupon obtain full legal title to the Equipment. The Manufacturer, or its successors or assigns, shall deliver to the Vendee a bill of sale transferring all of its right, title and interest in the Equipment to the Vendee and warranting the same to be free of all claims, liens, security interests, security titles and encumbrances arising by, through or under such party, and the Manufacturer and its successors and assigns shall thereafter have no rights whatsoever hereunder or under any related document with respect to the Equipment. The Manufacturer, if requested by the Vendee, will execute and deliver to the Vendee, at its address specified in Section 20 hereof, at the expense of the Vendee, such instrument or instruments in writing as may be necessary or appropriate in order to make clear upon the public records the title of the Vendee to the Equipment.

#### SECTION 4. TITLE TO THE EQUIPMENT.

4.1. The Manufacturer shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee or the Lessee as herein provided. Any and all additions to the Equipment (not including, however, except as provided below in this parenthetical, any parts installed on and additions to any Item of Equipment, any portion of whose cost is furnished by the Lessee and which are readily removable without causing material damage to such Item of Equipment, but including parts installed on and replacements made to any Item of Equipment pursuant to the Lessee's obligations in Section 7 of the Lease to comply with all laws, regulations, requirements and rules applicable to the use, maintenance and operation of the Equipment or which constitute ordinary maintenance and repairs made by the Lessee pursuant to Section 8 of the Lease) and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of any Equipment, together with interest and all other payments as herein provided and all the Vendee's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Vendee so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address specified in Section 19 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and will pay to the Vendee any money paid to the Manufacturer, pursuant to Section 6 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Vendee.

SECTION 5. MARKING OF EQUIPMENT.

The Vendee will use reasonable efforts to cause the Lessee to keep each Item of Equipment marked as contemplated by Section 4 of the Lease.

SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment (i) shall be or become lost, stolen, destroyed or, in the opinion of the Lessee pursuant to Section 11.2 of the Lease, irreparably damaged or permanently rendered unfit for use from any cause whatsoever, or (ii) shall be requisitioned or taken by any governmental authority in the United States (other than the United States of America or any agency thereof) by condemnation or otherwise for an indefinite term or for a stated term which exceeds one year, but in either such case only after the Lessee is in fact denied the use and possession of such Item of Equipment for a period exceeding one year, or (iii) shall be requisitioned or taken by any foreign governmental authority by condemnation or otherwise for an indefinite term or for a stated term of more than one year but in either such case only after the Lessee is in fact denied the use and possession of such Item of Equipment for a period of more than one year, or (iv) shall be requisitioned or taken by any governmental authority in the United States (including the United States of America or any agency thereof) or any foreign governmental authority and a sale, exchange or other disposition (within the meaning of the Internal Revenue Code of 1954, as amended) shall occur as a result thereof (any such occurrence being hereinafter referred to as a "Casualty Occurrence"), the Vendee shall promptly and fully, after it has actual knowledge thereof, inform the Manufacturer in regard thereto. When any Item of Equipment suffers a Casualty Occurrence the Vendee, on the date of payment of the next succeeding installment of principal and/or interest on the Conditional Sale Indebtedness (or within sixty days after the date of the Casualty Occurrence, if a loss occurs within the 30-day period immediately preceding the due date for such next succeeding installment), shall pay to the Manufacturer the Casualty Payment (as defined in Section 6.5 hereof) of such Item as of the date of such payment. Each such payment shall be accompanied by notification from the Vendee identifying the amount thereof and stating that said payment constitutes a Casualty Payment. Promptly following such payment, the Vendee will furnish to the Assignee, the Trustor and the Lessee a revised schedule of payments of principal and interest thereafter to be made hereunder in such number of counterparts as any such party may reasonably request.

6.2. The Manufacturer, shall, immediately upon receipt thereof, apply the money deposited pursuant to Section 6.1 hereof to the prepayment of that portion of the Conditional Sale Indebtedness in respect to the Purchase Price of any Items of Equipment having suffered a Casualty Occurrence, plus interest then accrued on the portion thereof so prepaid, but without premium. The quarterly payments of installments of principal of and interest on the Conditional Sale Indebtedness relating to the remaining Equipment and interest thereon becoming due thereafter shall be redetermined on the basis of the amount of such Conditional Sale Indebtedness remaining unpaid and on the basis of the number of quarterly payments remaining immediately after such application.

6.3. In the event that the Lessee shall elect, in accordance with Section 11.11 of the Lease, to terminate the Lease as to all of the Items of Equipment, then on the Obsolescence Termination Date (as defined in Section 11.11 of the Lease) unless the Manufacturer shall have otherwise agreed in writing, the Vendee shall pay to the Manufacturer a sum equal to the Obsolescence Termination Value (as defined in said Section 11.11) of the Equipment. Such payment shall be applied by the Manufacturer, immediately upon receipt thereof, to the prepayment of the unpaid Conditional Sale Indebtedness, plus interest then accrued, but without premium.

6.4. Upon payment to the Manufacturer of the Casualty Payment in respect of an Item of Equipment having suffered a Casualty Occurrence, or payment of the Obsolescence Termination Value in the case of an election by the Lessee to terminate the Lease with respect to the Equipment on the Obsolescence Termination Date, absolute right to the possession of, title to and property in such Item or Items of Equipment shall automatically pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer. The Manufacturer, if requested by the Vendee, will execute and deliver to the Vendee, at its address specified in Section 19 hereof, at the expense of the Vendee, appropriate instruments confirming such release to the Vendee of security title to and property in such Item or Items of Equipment, free of all liens and encumbrances created or retained hereby, in recordable form in order that the Vendee may make clear upon the public records the title of the Vendee to such Item or Items of Equipment.

6.5. The Casualty Payment in respect of each Item of Equipment having suffered a Casualty Occurrence shall be deemed to be that portion of the Conditional Sale Indebtedness related to such Item remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.6. The Obsolescence Termination Value of the Equipment shall be deemed to be the entire amount of the Conditional Sale Indebtedness remaining unpaid on the date as of which such Obsolescence Termination Value shall be determined, plus interest accrued thereon but unpaid as of such date.

6.7. In the event that prior to the expiration of the Primary Term of the Lease (as defined therein), the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise which does not result in a Casualty Occurrence thereunder, the Vendee's duty to pay the indebtedness in respect of the purchase price thereof shall continue for the duration of such requisitioning or taking. The Vendee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

## SECTION 7. INSPECTIONS.

The Manufacturers shall have the right, by their agents, to inspect the Equipment and records of the Vendee with respect thereto once in every year.

## SECTION 8. POSSESSION AND USE.

8.1. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturers to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

8.2. The Vendee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease, and it is hereby acknowledged and agreed that the rights of the Manufacturer under this Agreement are subject to the right, title and interest of the Lessee as lessee under the Lease. The Lease shall not be amended nor terminated without the prior written consent of the Manufacturer, which shall not be unreasonably withheld.

## SECTION 9. PROHIBITION AGAINST LIENS.

9.1. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee or its successors or assigns (other than the Lessee or its assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturer, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

9.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "permitted liens").

## SECTION 10. INDEMNITIES.

10.1. The Vendee shall use reasonable efforts to cause the Lessee to assume all risk and expense arising from the possession, use, operation and maintenance by whomsoever of the Equipment.

10.2. Except to the extent provided in Section 2.5 hereof and subject to the provisions of Section 13 hereof, the Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

10.3. The Manufacturer warrants that the Equipment will be built in accordance with the Specifications therefor and warrants that the Equipment will be free from defects in material (except as to specialites incorporated therein specified by the Lessee and not manufactured by the Manufacturer, in which case the Manufacturer will assign all guarantees, if any, or warranties, as received by it from the Manufacturer of the specialty) or workmanship under normal use and service, the Manufacturer's obligation under this Section being limited to making good at its plant any part or parts of any Item of Equipment which shall, within one year after the delivery of such Item of Equipment to the Vendee be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of any such Item of Equipment or (ii) any such Item of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS HEREUNDER AS LIMITED HEREBY AND THE MANUFACTURER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID. IN NO EVENT SHALL THE MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Items of Equipment at any time with the approval of the Lessee without incurring any obligation to make similar changes or additions in respect of other Items of Equipment previously delivered to the Lessee. The Manufacturer further agrees with the Vendee that acceptance of any Items of Equipment under Section 2.4 hereof shall not be deemed a waiver by the Vendee of any of its rights under this Section 10.3.

10.4. It is hereby agreed that the Lessee shall be and is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturer expressed in this Section 10.

## SECTION 11. PATENT INDEMNITIES.

Except in cases of designs, processes or combinations specified by the Lessee and not manufactured by the Manufacturer and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Vendee, the Trustor, and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Trustor or the Lessee, their assigns, or the users of the Equipment, because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Lessee likewise shall indemnify, protect and hold harmless the Manufacturer, the Vendee and the Trustor, its or their assigns, from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer, the Vendee or the Trustor or their respective assigns, or the users of the Equipment, as the case may be, because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Manufacturer, or article or material specified by the Lessee and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. In case any lien of Equipment is held to constitute Infringement of any patent or other similar right in respect of which liability may be charged against such Manufacturer, and the use of any Item of Equipment is enjoined, such Manufacturer shall, at its own expense and at its option, either procure for the Vendee, the Trustor and the Lessee the right to continue using such Item of Equipment or replace the same, within six months of such Injunction, with non-Infringing Equipment acceptable to the Vendee and the Lessee, or modify it so it becomes non-infringing, or remove the Infringing portion of the Item of Equipment and refund the purchase price and the transportation and installation costs of such portion, but in each case without impairing the operational capacity of such Item of Equipment. The Vendee, the Lessee and the Trustor will give prompt notice to the Manufacturer of any claim known to them, respectively from which liability may be charged against the Manufacturer hereunder; provided, however, that failure to give such notice shall not release the Manufacturer from its indemnities hereunder. At its expense and cost, the Manufacturer with its counsel shall defend such claim. The Manufacturer will promptly give notice to the Vendee and the Lessee of any claim known to the Manufacturer from which liability may be charged against the Vendee or the Lessee hereunder; and the Manufacturer shall provide such information as it may possess reasonably to enable the Vendee or the

Lessee to defend, if necessary, such claim. The Vendee, the Lessee and the Trustor shall provide such information as they may possess reasonably to enable the Manufacturer to defend such claim. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee, the Lessee and the Trustor every claim, right and cause of action which the Manufacturer has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Manufacturer further agrees to execute and deliver to the Vendee, the Lessee and the Trustor or the users of the Equipment all and every such further assurance as may be reasonably requested more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

#### SECTION 12. ASSIGNMENTS.

12.1. The Vendee will not, except as otherwise provided in the Trust Agreement, sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Section 8.2 hereof, transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturer, which consent shall not be unreasonably withheld. No such sale, assignment or transfer shall subject the Manufacturer to any duties, obligations or liabilities whatsoever.

12.2. All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Manufacturer and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance with the provisions hereof or to respond to its guaranties, warranties and agreements contained herein, or relieve the Vendee of its obligations to the Manufacturer hereunder except as provided in Section 12.3 hereof.

12.3. Upon any such assignment the assignor shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturer's right, security title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

12.4. The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated in accordance with the introductory clauses to this Agreement. The Vendee expressly represents, for the purpose of assurance to the Assignee and to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer as hereinbefore provided the rights of the Assignee and any other such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Manufacturer.

12.5. In the event of any such assignment or successive assignments by the Manufacturer of security title to the Equipment and of the Manufacturer's rights hereunder with respect thereto, the Vendee will, whenever requested by the Assignee or any other such assignee, change the identification to be marked on each side of each Item of Equipment or, in the event such Item shall then be leased to the Lessee, the Vendee will use its reasonable efforts to cause the Lessee pursuant to Section 4 of the Lease to change the identification to be marked on each side of such Item, so as to indicate the security title of such assignee to the Equipment with such identification as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such identification for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such identification with respect to the first assignee of this Agreement (or to a successor agent or trustee in case the first assignee is an agent or trustee) and with respect to the Vendee shall be borne by the Manufacturer. The cost of marking such identification in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

12.6. In the event of any such assignment to the Assignee prior to the completion of delivery of the Equipment, the Vendee will, in connection with settlement for the Equipment

subsequent to such assignment, deliver to the Assignee, at the time of delivery by the Lessee of notice fixing the Closing Date, all documents reasonably required by the terms of the Assignment to be delivered by the Vendee to the Assignee in connection with such settlement, in such number of counterparts as may reasonably be requested.

SECTION 13. LIMITATION OF VENDEE'S OBLIGATIONS.

13.1. It is expressly understood and agreed by and between the Vendee and the Manufacturer and their respective successors and assigns that this Agreement is executed by The First National Bank of Chicago, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and The First National Bank of Chicago hereby warrants that it possesses full power and authority to enter into and perform this Agreement); and it is expressly understood and agreed that, except in the case of negligence or wilful misconduct of the Trustee or the Trustor, nothing herein contained shall be construed as creating any liability on The First National Bank of Chicago or the Trustor, individually or personally, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Manufacturer and by each and every person now or hereafter claiming by, through or under the Manufacturer; and that so far as The First National Bank of Chicago or the Trustor or the Manufacturer, individually or personally, are concerned, the Manufacturer and any person claiming by, through or under the Manufacturer shall look solely to the Trust Estate as defined in the Trust Agreement for payment of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments and obligations as herein provided.

13.2. Without limiting the effect of Section 13.1 hereof, the Vendee shall be liable in respect of, and shall be obligated to pay, the Conditional Sale Indebtedness, interest and premiums thereon and any other expenses or liabilities of the Manufacturer herein undertaken to be paid by the Vendee only to the extent the Vendee has indefeasibly received equivalent amounts from the Lessee under the Lease, other than (i) amounts distributed by the Vendee to the Trustor while, to the actual knowledge of the Vendee, no Event of Default hereunder was continuing, and (ii) amounts payable to the Vendee or the Trustor pursuant to Sections 6 and 10.2 of the Lease.

13.3. Without limiting the effect of Section 13.1 hereof, the obligations of the Vendee under Sections 2.4, 5, 6.1, 6.3, 6.4, 9.1, 10.1, 12.5, 15.2, 15.7 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed they shall constitute the basis for an Event of Default hereunder pursuant to Section 14 hereof.

SECTION 14. DEFAULTS.

14.1. In the event that any one or more of the following Events of Default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for five days; or

(b) The Vendee shall make or permit any unauthorized assignment or transfer of this Agreement, or of possession of any Item of the Equipment, or any portion thereof, or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Vendee contained herein and such default shall continue for 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(d) Any proceedings shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or for the property of the Vendee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) An Event of Default shall have occurred and be continuing under the Lease;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, but without prejudice to any rights of the Vendee under the Lease with respect to any default thereunder, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 10% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled, subject to the provisions and limitations of Section 13 hereof, to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions and limitations of Section 13 hereof.

14.2. In addition to the right of the Vendee to elect to cure a default hereunder as provided in Section 14.4 hereof, and notwithstanding the rights of the Manufacturer otherwise expressed in Section 14.1 hereof, in the case of any Event of Default under the Lease which can be cured by the payment of money, the Manufacturer may not (so long as the Vendee and/or the Trustor shall retain any cure right under the next following sentence), without the prior written consent of the Vendee and the Trustor, exercise any of the rights or remedies provided herein or in the Lease during a 30-day period following the giving of written notice of such Event of Default by the Manufacturer to the Vendee. During such 30-day period the Vendee and/or the Trustor shall have the right to cure such Event of Default on behalf of the Lessee; provided that such right to cure such Event of Default shall be limited to not more than two such consecutive Events of Default; provided further, that in the event the Lessee shall have reimbursed the Vendee and/or the Trustor within fifteen days of the exercise of such right to cure by the Vendee and/or the Trustor, then for the purpose of the preceding proviso, such cure right shall not be deemed to have been exercised. No party exercising the right to cure an Event of Default pursuant to this Section 14.2 shall obtain any lien, charge or encumbrance of any kind on any Item of Equipment or any rentals or other amounts payable therefor under the Lease in respect of any sums paid or expenses incurred in connection with the exercise of such right or the curing of such Event of Default, nor shall the right of such party to reimbursement from

the Lessee or any other party for the repayment of such sums so advanced or expenses so incurred impair the prior right of the Manufacturer to the sums payable by the Lessee under the Lease.

14.3. The Manufacturer may waive any Event of Default hereunder and its consequences and rescind and annul any such declaration by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this Section 14.3 it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

14.4. Any default hereunder shall be deemed cured and not continuing if the Vendee, prior to any sale by the Manufacturer of the Equipment as provided in Section 15.3, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement.

## SECTION 15. REMEDIES.

15.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such Event of Default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 15 expressly provided, and may remove the same from possession and use of the Vendee and for such purpose may enter upon the premises of the Vendee or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, with or without process of law.

15.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Manufacturer, the Vendee shall use its reasonable efforts to cause the Lessee, at the expense of the Lessee, forthwith and in the usual manner to cause the Equipment

to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

15.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such Event of Default and after the entire unpaid balance of the Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession or either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale in accordance with the provisions of Section 15.4 hereof, and any other notice which may be required by law, sell and dispose of the Equipment, or any part thereof, at public auction to the highest bidder or at private sale, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Manufacturer may determine and at such place or places as the Manufacturer may designate pursuant to Section 15.4 hereof (whether or not it be the location of the Equipment or any part thereof). Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice.

15.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale of the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Vendee shall be given written notice of such sale not less than fifteen business days prior thereto, by mail addressed as provided herein and provided further that such sale shall be conducted in a commercially reasonable manner. If such sale shall be a private sale, it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within fifteen business

days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. At any public sale the Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Vendee (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the purchase price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Vendee hereunder.

15.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer; provided that the Manufacturer agrees that it will not retain the Equipment in satisfaction of the Conditional Sale Indebtedness. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

15.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of costs and expenses of suit, if any, and of such sale and of all proper expenses, liabilities and advances, including reasonable legal expenses and fees of outside counsel incurred or made by the Manufacturer (but only to the extent such costs, expenses, liabilities and advances have not been otherwise paid by the Lessee), second to the payment of interest on the Conditional Sale Indebtedness accrued and unpaid and third to the payment of the Conditional Sale Indebtedness. If, after applying as aforesaid all sums of money realized by the Manufacturer, there shall remain any amount due to it under the provisions of this Agreement, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee, subject to the provisions of Section 13 hereof. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid promptly to the Vendee.

15.7. The Vendee, subject to the provisions of Section 13 hereof, will pay all reasonable expenses, including reasonable fees of outside counsel, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including reasonable fees of outside counsel and the amount thereof shall be included in such judgment.

15.8. The foregoing provisions of this Section 15 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto. No remedies herein provided shall be exercised in such manner as to violate any rights of the Lessee under the Lease unless an Event of Default shall have occurred and be continuing under the Lease.

#### SECTION 16. APPLICABLE STATE LAWS.

16.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

16.2. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

16.3. Nothing in this Section 16 or any other provision of this Agreement shall be deemed to make ineffective, or to modify or waive, the provisions and limitations of Section 13 hereof.

SECTION 17. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's rights thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Vendee hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Manufacturer's rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 18. RECORDING.

The Vendee will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer's of their security title to the Equipment and their rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

SECTION 19. NOTICE.

Any notice required or permitted to be given pursuant hereto shall be deemed to have been given when deposited in the United States certified mail, first class, postage prepaid, addressed as follows:

(a) to the Vendee: The First National Bank of Chicago, One First National Plaza, Chicago, Illinois 60670, Attention: Corporate Trust Department, with copies of such notice to be sent to American Road Equity Corporation, The American Road, P. O. Box 1729, Dearborn, Michigan 48121, Attention: Vice President-CIR Financing.

(b) to the Lessee: Farmland Industries, Inc., 3315 North Oak Trafficway, Kansas City, Missouri 64116, Attention: Financial Vice President.

(c) to the Manufacturer: Pullman Incorporated (Pullman Standard Division), 200 S. Michigan, Chicago, Illinois 60604, Attention: Law Department.

(d) to the Assignee: New England Mutual Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02117, Attention: Securities Department,

or at such other address as may have been furnished in writing by such party to the other parties to this agreement.

SECTION 20. HEADINGS AND TABLE OF CONTENTS.

All section headings and the Table of Contents are for convenience only and shall not affect any construction or interpretation of this Agreement.

SECTION 21. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedules relating hereto, together with the Lease, exclusively and completely state the rights and agreements of the Manufacturer and the Vendee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturer and the Vendee. Without the prior written consent (which shall not be unreasonably withheld) of the Manufacturer, the Vendee will not consent to any amendment, modification, waiver or supplement to the Lease or, except in accordance with Section 14 thereof, cancel or terminate the Lease prior to the payment in full of the Conditional Sale Indebtedness, together with interest thereon and all other payments due under this Agreement.

SECTION 22. LAW GOVERNING:

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 23. DEFINITIONS.

The term "Manufacturer", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Pullman Incorporated (Pullman Standard Division) and any successor or successors for the time being to the manufacturing properties and business thereof, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights and obligations hereunder that are retained and excluded from any assignment.

SECTION 24. ASSIGNMENT OVER AND GRANT OF SECURITY INTEREST IN THE LEASE.

24.1. In order to further secure the payment of the Conditional Sale Indebtedness, the interest thereon and the payment or performance of all of the Vendee's obligations contained in this Agreement, the Vendee hereby assigns, transfers and sets over to the Manufacturer and grants the Manufacturer a security interest in all right, title, interest, claims and demands of the Vendee as lessor in, under and to the Lease, including all extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Vendee as lessor under the Lease, including, without limitation, but subject to the exceptions, reservations and limitations contained in Section 24.6 below:

(a) the immediate and continuing right to receive and collect all rentals, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the lessor under the Lease pursuant thereto;

(b) following the occurrence of an Event of Default hereunder, the right to make all waivers and agreements; and

(c) the right to take such action upon the occurrence of a default or an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which the Vendee or any lessor is or may be entitled to do under the Lease;

it being the intent and purpose hereof that the assignment and transfer to the Manufacturer of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Manufacturer shall have the right to collect and receive said rentals and other sums for application to the payment of the Conditional Sale Indebtedness, together with the interest thereon and the other obligations of the Vendee hereby secured at all times during the period from and after the date of this Agreement until the Conditional Sale Indebtedness, together with the interest thereon and all other obligations of the Vendee hereby secured have been fully paid and discharged; provided, however, that each such amount so assigned shall be applied to the payment of all principal, accrued interest and premium, if any, in respect of said Conditional Sale Indebtedness due on or prior to the date such amount so assigned shall be due and payable and the balance, if any, of each such amount so assigned shall be promptly paid to or upon the order of the Vendee.

24.2. Subject to Section 24.6 hereof, the Vendee agrees that, without the consent of the Manufacturers, it will not:

(a) declare a default or exercise the remedies of the lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification, surrender or termination of, the Lease in respect of the Equipment (except as otherwise expressly provided herein) or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof; or

(b) receive or collect or permit the receipt or collection of any rentals or Casualty Value payments prior to the date for the payment thereof provided for by the Lease (unless received without fault and promptly remitted to the Manufacturer) or assign, transfer or hypothecate (other than to the Manufacturer hereunder) any rentals or Casualty Value payments then due or to accrue in the future under the Lease.

24.3. The Vendee does hereby irrevocably constitute and appoint the Manufacturer its true and lawful attorneys-in-fact with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rentals and other payments (except as set forth in Section 24.6 hereof) and sums which are assigned under Section 24.1 hereof and, following the occurrence of an Event of Default hereunder, full power to settle, adjust or compromise any claim thereunder as fully as the Vendee

could itself do, and to endorse the name of the Vendee on all negotiable instruments or other commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Vendee or otherwise, which the Manufacturer may deem necessary or appropriate to protect and preserve the right, title and interest of the Manufacturer in and to such rentals and other payments and sums and the security intended to be afforded hereby.

24.4. This assignment being made only as security shall not subject the Manufacturer to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee, as lessee under the Lease, shall be and remain enforceable by the Lessee, as lessee, its successors and assigns, against, and only against, the Vendee. Further, the Vendee covenants and agrees that it will perform all its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Manufacturer, in its name, or in the name of its nominee, or in the name of the Vendee, as its attorney-in-fact, on the happening of any failure by the Vendee, to perform or cause to be performed any such obligation.

24.5. Upon the full payment, discharge and satisfaction of the full amount of the Conditional Sale Indebtedness, together with interest as herein provided and the performance of all of the Vendee's obligations herein contained, the assignment made hereby and all rights herein assigned to the Manufacturer shall cease and terminate, and all estate, right, security title and interest of the Vendee in and to the Lease shall revert to the Vendee.

24.6. There are expressly excepted and reserved from the assignment and security interest provided for in Section 24.1 above the following described properties, rights, interests and privileges:

(a) all payments of any indemnity under Sections 6 and 10.2 of the Lease which are payable to the Vendee or the Trustor for its own account;

(b) if an Event of Default under the Lease based on a breach of any covenant of the Lessee to pay any such indemnity or payment referred to under paragraph (a) of this Section 24.6 shall occur and be continuing, the right of the Vendee to declare that an Event of Default exists under the Lease and the right of the Vendee or the

Trustor to exercise the remedies, but only those remedies, provided for in Section 14.2(a) of the Lease to enforce performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Vendee or the Trustor or to recover damages for the breach thereof; and

(c) any insurance proceeds payable under general public liability policies maintained by the Lessee pursuant to Section 11.1 of the Lease which by the terms of such policies or the terms of the Lease are payable directly to the Vendee or the Trustor for its own account.

SECTION 25. EXECUTION AND EFFECTIVE DATE.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first above written for convenience, the actual date or dates of execution hereof are respectively the date or dates of acknowledgment set forth below, and this Agreement shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the respective dates shown on the acknowledgments hereto.

PULLMAN INCORPORATED  
(Pullman Standard Division)

[Corporate Seal]

By B R Beem  
Its Vice President ~~Freight Unit~~

Attest:

William O. Dodge  
Assistant Secretary

THE FIRST NATIONAL BANK OF CHICAGO,  
Trustee under F.I. Trust No. 7

[Corporate Seal]

By [Signature]  
Its Vice Pres.

Attest:

[Signature]  
Trust Officer

STATE OF ILLINOIS     )  
                              ) SS.  
COUNTY OF COOK        )

On this 31st day of August, 1978, before me personally appeared B. R. Beers, to me personally known, who, being by me duly sworn, says that he is a Vice President ~~Freight~~ ~~Unit~~ of PULLMAN INCORPORATED, (PULLMAN STANDARD DIVISION) that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Olson  
Notary Public

[Notarial Seal]

My Commission Expires: Aug. 3, 1980

STATE OF ILLINOIS     )  
                              ) SS.  
COUNTY OF COOK        )

On this 29<sup>TH</sup> day of AUGUST, 1978, before me personally appeared A.R. BOHM, to me personally known, who being by me duly sworn, says that he is VICE PRESIDENT of THE FIRST NATIONAL BANK OF CHICAGO, as Trustee under F. I. Trust No. 7, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: 9-17-79

SCHEDULE A  
(Conditional Sale Agreement)

MANUFACTURER:	Pullman Incorporated (Pullman Standard Division)
PLANT OF MANUFACTURER:	Butler, Pennsylvania
DESCRIPTION OF EQUIPMENT:	100 100-ton covered hopper cars, bearing Road Mark and Numbers FLIX 600 to FLIX 699 both inclusive
SPECIFICATIONS:	Manufacturer's Specification Number 9999 dated August 10, 1978
BASE PRICE:	\$33,650.10 per Item (\$3,365,010 for 100 Items)
MAXIMUM PURCHASE PRICE:	\$39,240 per Item
DELIVER TO:	Farmland Industries, Inc.
PLACE OF DELIVERY:	Butler, Pennsylvania
ESTIMATED DELIVERY DATES:	September 5-8, 1978
OUTSIDE DELIVERY DATE:	December 31, 1978